

ORDINANCE NO. O-2014-113

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 10, "TYLER UNIFIED DEVELOPMENT CODE", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, TO AMEND REGULATIONS RELATING TO ZONING DISTRICTS, USE REGULATIONS, DEVELOPMENT STANDARDS, AND DEFINITIONS RELATED TO FOOD TRUCKS AND FOOD TRUCK PARKS; PROVIDING FOR DISTANCE REQUIREMENTS; ESTABLISHING A FOOD TRUCK PILOT PROGRAM; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent by implication or otherwise, the municipality from exercising the authority incident to self-government; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City may license and regulate persons, corporations, and associations engaged in any business, occupation, profession or trade; and

WHEREAS, Section 1 of the Tyler City Charter states that the City may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, and when not prescribed by the Charter, in such manner as shall be provided by ordinances and resolutions of the City Council; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

WHEREAS, the powers granted to municipalities under Texas Local Government Code Chapter 211, Subchapter A., are for the purpose of promoting the public health, safety, morals, and general welfare, as well as preserving places and areas of historical, cultural or architectural importance and significance; and

WHEREAS, Texas Local Government Code Section 211.003(a)(5) authorizes the governing body of a municipality to regulate the location and use of buildings, or structures, and land for business, industrial, residential, or other purposes; and

WHEREAS, Texas Local Government Code Section 211.007(a) authorizes a zoning commission to recommend boundaries for the original zoning districts, and appropriate regulations for each district; and

WHEREAS, Texas Local Government Code Section 212.002 states that after a public hearing on the matter, the governing body of a municipality may adopt rules governing plats and subdivisions of land within the municipality's jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality; and

WHEREAS, Texas Local Government Code Section 212.003(a) provides that the governing body of a municipality may by ordinance extend to the extraterritorial jurisdiction of the municipality the application of the municipal ordinance prescribing rules governing plats and subdivisions of land; and

WHEREAS, Texas Transportation Code Section 311.001(a) provides that a home-rule municipality has exclusive control over and under the public highways, streets, and alleys of the municipality; and

WHEREAS, on April 23, 2008, the City Council adopted Ordinance No. 0-2008-48, which amended Tyler City Code Chapter 10 by adopting the Unified Development Code governing zoning, subdivision, development and other land use regulations; and

WHEREAS, it is important to supplement the health and safety regulations enforced by the Northeast Texas Public Health District; and

WHEREAS, it is important to amend and update existing sections of the Unified Development Code; and

WHEREAS, the appointed UDC Steering Committee reconvened to review and recommend proposed changes to the Unified Development Code; and

WHEREAS, major recommended substantive amendments to the Unified Development Code were presented to the Developers Roundtable;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article III., "Use Regulations", Division A., "Use Table Overview", is hereby amended by adding the following amendments to the "COMMERCIAL" section of the table in Section 10-49 to read as follows, with no other changes:

Table 10-49. Non-Residential Use Table

USE GROUP		AG	AR	RPO	C-1	C-2	DBAC	PMXD-	PMXD-	PCD	INT	M-1	M-2	MU
Use Category	Use Sub-Category													
Specific Uses														
Eating and Drinking Establishments														
Bakery (Retail)					X	X	X	X	P	P	P			
Cafe, Coffee Shop, Tea Room				X	X	X	X	P	P	P				X
Commissary					X	X	X	P	P	P		X	X	
Delicatessen					X	X	X	P	P	P	X			X
Donut Shop					X	X	X	P	P	P				X
Food Truck Park, Minor					S	X	X	P	P	P		X	X	
Food Truck Park, Major					S	S	S	S	S	S		S	S	
Ice Cream Parlor (With or W/out Drive-Thru)					X	X	X	P	P	P				
Private Club				X	X	X	X	P	P	P	X	X		
Restaurant (With or W/out Drive-Thru)					X	X	X	P	P	P		X		X

(Ord. 0-2009-19, 3/11/09) (Ord. No. 0-2011-8; 1/26/11) (Ord. No. 0-2011-45, 6/8/11) (Ord. No. 0-2012-38; 4/25/12) (Ord. No. 0-2013-16, 2/27/13) (Ord. No. 0-2014-113; 12/10/14)

PART 2: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article III., "Use Regulations", Division B., "Use Category Descriptions", is hereby amended by amending Section 10-52 to read as follows:

Sec. 10-52. Commercial Use Categories

- a. through u. No changes...
- v. Right-Of-Way Food Sales

Right-of-way food sales not in compliance with Tyler City Code Chapter 17 are prohibited and are illegal. Also, any food sales are subject to any applicable Orders of the Northeast Texas Public Health District. (Ord. No. 0-2012-38; 4/25/12) (Ord. No. 0-2014-113; 12/10/14)

PART 3: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article III., "Use Regulations", Division C., "Limited and Specific Use Standards", is hereby amended by adding a new Section 10-76 to read as follows:

Sec. 10-76. Mobile Food Units and Food Truck Parks

a. Purposes and Intents

1. The purpose of this section is to allow for Mobile Food Units to operate within the City on private property and City-owned property for a limited period of time. This section also allows for Food Truck Parks as a principal use. This section does not apply to push-carts which require appropriate Northeast Texas Public Health District permits and Transient Vendor Permits. Mobile Food Units operating within the public right-of-way require a Transient Vendor Permit and must comply with the operational requirements in this section and Chapter 17 of this Code.

2. This section is intended to implement elements of the Tyler 1st Comprehensive Plan and the Industry Growth Initiative by supporting small-business start-ups, diverse cuisine options, and tourism-inducing environments.

b. Required Permits and Inspections

1. All required permits must be displayed in a location that is easily viewable by the public.

2. All Mobile Food Units shall obtain all applicable permits and inspections from the City of Tyler (including Fire Department) and the Northeast Texas Public Health District, or successor. All Mobile Food Units operating within Smith County must be authorized to do so.

3. All Mobile Food Units on private property and City-owned property shall require a Transient Vendor Permit issued by the Planning Director, unless exempt as follows:

- a. Mobile Food Units operating under an approved Parks and Recreation Department Special event permit.
- b. Mobile Food Units operating under an approved Temporary Use Permit issued for a special event.
- c. Mobile Food Units operating under an approved permit issued by the Water Quality and Production Manager for Lake event permits.

c. Operational Requirements

1. Mobile Food Units may only operate in locations subject to the conditions of an approved permit. Mobile Food Units also operating within a Food Truck Park shall also be subject to the Park's rules and restrictions.

2. All Mobile Food Units must park on an improved surface unless they are located at an approved Food Truck Park and subject to the Park's conditions.

3. No Mobile Food Unit may be located on a vacant lot.

4. All Mobile Food Units shall provide self-closing lidded trash receptacles. The trash receptacle must be placed outside next to the unit for use by patrons of the unit. The area around the unit must be kept clean and free from litter, garbage, and debris.

5. All Mobile Food Units shall provide fire prevention tools as required by the City of Tyler Fire Department.
6. Each Mobile Food Unit shall report to its designated commissary at least once a day for food, supplies, cleaning, and servicing and as required by the Northeast Texas Public Health District, or successor.
7. Mobile Food Units shall not utilize portable seating unless located at an approved Food Truck Park and subject to the Park's conditions therein.
8. All Mobile Food Units operating under a Transient Vendor Permit, not within an approved Food Truck Park, shall provide documentation that the Unit's patrons and employees have access to permanent restroom facilities.
9. All Mobile Food Units not within an approved Food Truck Park, shall provide documentation from all restaurants within 300 feet from front door expressly allowing them to do so.
10. Mobile Food Units shall be removed from approved locations daily unless the conditions of Subsection d.1.b. of this Section are met.
11. Mobile Food Units may not stop for more than three consecutive hours at any one location to sell or serve food provided however this shall not apply to Mobile Food Units within Food Truck Parks or operating under an approved Temporary Use Permit or a permit issued by the Parks and Recreation Department. The Mobile Food Unit shall move at least 50 feet away from its previous location once the three hour period has expired and shall not return to the previous location within a one hour period of time.
12. Any unauthorized connection to the water system and/or unauthorized dumping of grease into the sanitary sewer system in conjunction with the operation of a mobile food unit in any way is strictly prohibited and is unlawful.
13. The use of portable generators to supply electricity to a Mobile Food Unit is prohibited.
14. No Mobile Food Unit shall operate within an access driveway or fire lane.

d. Food Truck Parks

1. The City shall allow for two types of Food Truck Parks (minor and major). Each type of Food Truck Park shall be considered a primary use on a property and therefore is subject to all development standards applicable to the zoning of the property, including off-street parking requirements. All Food Truck Parks shall require a Certificate of Occupancy and be subject to the following requirements:
 - a. All Food Truck Parks shall comply with all applicable regulations of the Northeast Texas Public Health District, adopted building codes, International Fire Code, this chapter, and all other applicable federal state and local laws. All Food Truck Parks shall be on legally platted lots.
 - b. All Mobile Food Units shall be removed from the Food Truck Park upon closing of the park. If a commissary is provided on-site and the Mobile Food Unit is approved to use the site's commissary, then the Mobile Food Unit will not have to be removed from the site each day.
 - c. On-site Manager: There must be a designated manager of the site that is responsible for the orderly organization of Mobile Food Units, the cleanliness of the site, and the site's compliance with all rules and regulations during business hours.
 - d. Restrooms: At least one permanent restroom within 500 feet of each Mobile Food Unit must be made accessible to Food Truck Park patrons while the Food Truck Park is open.
 - e. Food Truck Parks may be standalone establishments or may be located on a property with other permanent uses (i.e. retail establishments). These properties shall

be designed to be able to accommodate all required development standards for all primary uses.

- f. Food Truck Parks that are eligible to sell alcohol may do so provided they meet the requirements of the Texas Alcoholic Beverage Code, Texas Alcoholic Beverage Commission and Tyler City Code. Alcohol shall only be sold from a fixed location.
- g. Mobile Food Units shall not be parked on unimproved surfaces and at a minimum be parked on compacted gravel base.
- h. Signs: One on-premise sign is permitted at the entrance(s) identifying the Food Truck Park subject to the sign regulations for the applicable zoning district. Each Mobile Food Unit may have attached signage.
- i. Distance requirements (property line measurement): A Food Truck Park shall not be less than 100 feet from another Food Truck Park.
- j. Food Truck Parks adjacent to single-family zoned or used property (not including a mixed-use structure), shall provide a Type C bufferyard.
- k. No Temporary Use Permits that allow for Mobile Food Units shall be permitted within Food Truck Parks.
- l. All Food Truck Parks not located in the "DBAC", Downtown, Business, Arts and Culture District shall provide off-street parking (see Sec. 10-360). On-site off-street parking for Minor Food Truck Parks may be provided on compacted gravel base. Off-street parking may be provided by way of shared or joint off-site parking arrangements within 1,000 feet of the park.
- m. Park owners are encouraged to provide for an aesthetically-pleasing environment which includes shade and seating elements in addition to pervious groundcover. The Planning Director may allow for alternative compliance as it pertains to landscaping requirements for standalone Food Truck Parks.
- n. All Food Truck Parks shall comply with the noise regulations in City Code Section 4-90.
- o. All Food Truck Parks shall comply with all adopted floodplain regulations.

2. Minor and Major Food Truck Parks. Minor Food Truck Parks shall consist of two to four Mobile Food Units (MFUs) and are generally allowed as a by-right use in all commercial and industrial zoning districts (see Section 10-49). Major Food Truck Parks shall consist of five or more MFUs and are considered a special use and subject to site plan approval. The site plan required for a Major Food Truck Park or Minor Food Truck Park in "C-1" shall provide the following information for review:

- a. The land area included within the property, the zoning classification of adjacent properties, and all public and private rights-of-way and easements bounding and intersecting the site;
- b. A legal description of the platted lots of the proposed site and the boundaries thereof;
- c. The location of each proposed permanent structure on the site and pads for Mobile Food Units, and identification of any proposed outdoor entertainment locations and fixed seating areas.
- d. The location, width, and surface material of driving lanes and Mobile Food Unit pads;
- e. The location of fire hydrants;
- f. The dimensions and capacities of parking areas and loading areas;
- g. All pedestrian walks, patios and open areas for use by tenants or the public;
- h. The location, height, and materials of all screening mechanisms;
- i. The location, size, height, and orientation of all lighting and signs;

- j. Location and screening of refuse containers, mechanical equipment, and outside storage or display;
- k. Location and number of provided seating and eating areas, including the number of fixed seats and tables;
- l. All proposed phasing of the park (if applicable);
- m. Location, height, separation of buildings, including location of restrooms;
- n. Location and type of electrical outlets provided for each corresponding pad site. Major Food Truck Parks are required to provide electrical and water hookups for each MFU; and
- o. Any other items required by the Planning and Zoning Commission and City Council.

3. Violations, Suspension/Revocation, and Enforcement. Any permit issued by the City will become void should the holder's Northeast Texas Public Health District permit be suspended or revoked. The on-site manager for a Food Truck Park or property allowing a transient Mobile Food Unit is required to ensure that no more than the maximum number of Mobile Food Units is located on the site at any given time. Failure to comply with this numerical limitation authorizes the Building Official or designee to suspend and/or revoke the Certificate of Occupancy. The Planning Director is authorized to revoke and withhold Transient Vendor Permits for vendors and/or locations at their discretion if there are documented repeated violations of this section. The Director of Utilities in accordance with Tyler City Code Chapter 19 is authorized to discontinue water service to any property in violation of unauthorized connection to the sewer system and/or unauthorized dumping of grease into the sanitary sewer system. City Code Enforcement Department personnel, Planning Department personnel, Building Inspections personnel, and Police Department personnel have full and complete authority to enforce all provisions of this section and have authority to issue citations for violations thereof. (Ord. No. 0-2014-113; 12/10/14)

PART 4: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article VI., "Development Standards", Division E., "Off-Street Parking and Loading", is hereby amended by adding the following amendments to the "Commercial Uses" section of the Table in Section 10-360 to read as follows, with no other changes:

Sec. 10-360. Off-Street Parking Requirements

Use Category	Specific Use	General Requirement	Additional Requirement
Residential Uses			
Commercial Uses			
Eating Establishments	Restaurant—dine in	1/100 sq. ft. GFA	
	Restaurant—take out	1/200 sq. ft. GFA	Applies to establishments whose products are primarily eaten off site.
	Drive Through	1/100 sq. ft. GFA	Drive-through stacking requirements apply.
	Private Club	1/100 sq. ft. GFA	
	Food Truck Park, Minor	2/mobile food unit	Off-site allowances within 1,000 ft.
	Food Truck Park, Major	2/mobile food unit +1/100 sq. ft. of designated seating area	Off-site allowances within 1,000 ft.

(Ord. NO. 0-2009-19; 3/11/09) (Ord. 0-2010-20, 3/10/10) (Ord. No. 0-2010-119; 11/10/10) (Ord. No. 0-2011-8; 1/26/11) (Ord. No. 0-2011-45; 6/8/11) (Ord. No. 0-2014-113; 12/10/14)

PART 5: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article VI., "Development Standards", Division K., "Outdoor Sales, Storage, and Display", is hereby amended by amending Section 10-454 to read as follows:

Sec. 10-454 Outdoor Transient Vendors

An outdoor transient vendor is a person, or the agent, consignee or employee of a person, who at a fixed location within the city engages in the temporary display, exhibition or delivery for the sale or offering for sale of any goods or services, including animals, with the intent of discontinuing such use upon the expiration of a time period not to exceed a maximum of 60 days, provided this time period shall not apply to Mobile Food Units. Outdoor transient vendor sales are not allowed in residential districts. The outdoor transient vendor regulations do not apply to vendors that are acting with the permission of a business at a fixed location, if such vendor sales occur at that fixed location and if such vendor sales are associated with that business's primary type of good or services sold. Any person receiving an outdoor transient vendor permit related to the sale or offering for sale of animals shall comply with the vaccination requirements set forth in Tyler City Code Section 14-30 or successor, as applicable, and must be able to show proof of such vaccinations upon request. An outdoor transient vendor must obtain an outdoor transient vendor permit by making application to the Planning Department prior to engaging in such activity. The outdoor transient vendor regulations in this section do not apply to fruit/vegetable stands, fruit/vegetable sales (roadside), the giving away of animals at any location, or the sale of animals at private residences. (Ord. No. 0-2010-19; 3/10/10) (Ord. No. 0-2014-113; 12/10/14)

a. Transient Vendor Application

Outdoor transient vendor permits are subject to approval of the Planning Director. A copy of said permit must be displayed prominently at the location.

b. General Requirements

1. Outdoor transient vendor sales may only be allowed in C-2, DBAC, PCD, PMXD-1, PMXD-2, INT, M-1 and M-2 zoning districts. Mobile Food Units may obtain a transient vendor permit for a C-1 zoning district only if the property has received a special use permit to operate a Food Truck Park.

2. Each lot is allowed only one outdoor transient vendor at a time. This does not apply to Mobile Food Units at Food Truck Parks.

3. A maximum of two permits for no more than 30 consecutive days each per calendar year per lot/contiguous tract is allowed. Mobile Food Units shall be issued a maximum of two permits for no more than six consecutive months per each calendar year per location. (Ord. No. 0-2012-83; 10/10/12) (Ord. No. 0-2014-113; 12/10/14)

4. No changes...

5. No changes...

6. Transient Mobile Food Units must comply with Section 10-76 of this Chapter. (Ord. No. 0-2014-113; 12/10/14)

PART 6: That Tyler City Code Chapter 10, "Tyler Unified Development Code", Article XIII., "Definitions", is hereby amended by amending, adding and locating the following definitions in the appropriate alphabetical order:

Article XIII. Definitions.

Division A. Definitions.

Commissary

A permitted fixed location food establishment where a mobile food unit or pushcart returns for servicing. This facility must meet the same requirements as a food service establishment. It must also have proper facilities to dispose of waste water and refill and flush potable and waste water tanks without risk of contamination. (Ord. No. 0-2014-113, 12/10/14)

Food Truck Park, Major

An area designed to accommodate five or more mobile food units and offering food and/or beverages for sale to the public as the primary use of the property; functioning as a single business. (Ord. No. 0-2014-113, 12/10/14)

Food Truck Park, Minor

An area designed to accommodate two to four mobile food units and offering food and/or beverages for sale to the public as the primary use of the property; functioning as a single business. (Ord. No. 0-2014-113, 12/10/14)

Mobile Food Unit

A vehicle establishment that is designed to be readily moveable and from which food is sold or served. The term includes, but is not limited to, a commercially manufactured vehicle.

Commercially-manufactured vehicle means a vehicle that was originally manufactured for the use as a mobile food preparation vehicle. (Ord. No. 0-2014-113, 12/10/14)

PART 7: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 8: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be Friday, December 12, 2014.

PASSED AND APPROVED this 10th day of December, A.D, 2014.




MARTIN HEINES, MAYOR OF
THE CITY OF TYLER, TEXAS

ATTEST:



CASSANDRA BRAGER, CITY CLERK

APPROVED:



DEBORAH G. PULLUM,
CITY ATTORNEY

